

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 02-55527-JRG and  
02-55528-JRG  
SAN JOSE MEDICAL MANAGEMENT,  
INC., a California Corporation,  
and affiliated Chapter 11 cases,  
Chapter 11  
Debtors.

ORDER ON THIRD AND FINAL FEE  
APPLICATION OF COOLEY GODWARD LLP

**I. INTRODUCTION**

Cooley Godward LLP's employment as counsel for the creditors' committee was approved by the court on December 12, 2002. The court ordered the audit of Cooley Godward's fees on December 9, 2004. Having reviewed the audit report, comments, as well as the objections to fees, the request for final approval of fees and expenses is granted in part and denied in part as herein stated.

**II. BACKGROUND**

The debtors filed bankruptcy on September 30, 2002. The plan of reorganization was confirmed on August 31, 2004, and the effective date in the plan was September 27, 2004. The committee took an active role in

1 the debtors' bankruptcy and the negotiation of the plan of reorganization.

2 Under the plan, a trust was created for the benefit of creditors to  
3 oversee implementation of the plan. A dispute arose between the debtors  
4 and the committee over the composition of the trust board. One reason for  
5 the dispute was the committee's proposal that a PacifiCare representative  
6 be a member of the board. For business reasons, the debtors did not want  
7 a representative of PacifiCare on the board. In addition, an issue arose  
8 over which constituency would have control over the board that was to be  
9 comprised of three members, in addition to a plan trustee.

10 By the time of the first hearing on the confirmation of the plan, the  
11 debtors and the committee appeared to be at an impasse over the  
12 composition of the board. The issue was resolved when the parties  
13 accepted the court's proposal that the trust board would be comprised of  
14 two representatives for the debtors and two representatives for the  
15 unsecured creditors. Final decision making authority would lie with the  
16 plan trustee.

### 17 **III. FEES**

18 Prior to submission of the third and final fee application, the court  
19 approved on an interim basis Cooley's first fee application in the amount  
20 of \$83,735.00 in fees and \$4,165.89 in expenses. The court approved  
21 Cooley's second fee application on an interim basis in the amount of  
22 \$89,977.00 in fees, after reducing the fees by \$5,000.00. The reduction  
23 was based on an objection to the time spent by counsel in objecting to a  
24 creditor's late-filed claim. On the second fee application, expenses in  
25 the amount of \$6,111.66 were approved on an interim basis.

26 By way of the third application, Cooley seeks \$203,892.50 in fees<sup>1</sup>

---

27  
28 <sup>1</sup>In a supplement to the third and final fee application, Cooley submitted invoices in support of their statement that the fees from November 1, 2003 through October 31, 2004, were actually \$127.00 less than the amount included in the third and final fee application.

1 and \$7,213.52 in costs. In addition, Cooley seeks estimated fees of  
2 \$7,500.00 for post-effective date fees and expenses related to the fee  
3 application. The total fees and expenses for which Cooley seeks final  
4 approval of are \$385,104.50 in fees and \$17,491.07 in expenses. This  
5 includes the \$7,500.00 in estimated post-effective date fees.

6 On receipt of the third and final fee application, the court received  
7 an objection from creditor Sobrato Group. Sobrato alleged that Cooley had  
8 a conflict of interest in representing the committee because Cooley is  
9 creditor PacifiCare's general counsel. Sobrato asserted that the conflict  
10 caused Cooley to act only in PacifiCare's interest, to the prejudice of  
11 unsecured creditors. Sobrato alleged that because of Cooley's  
12 representation of PacifiCare, negotiations on the plan and disclosure  
13 statement were protracted, especially with respect to the issue of the  
14 trust board to be created as part of the plan. Sobrato asked that no  
15 further fees be allowed until the plan trustee had an opportunity to  
16 investigate whether a conflict existed.<sup>2</sup>

17 At the hearing on the third and final fee application on December 1,  
18 2004, the court approved \$211,519.50 in fees and \$7,213.52 in expenses on  
19 an interim basis, subject to a \$50,000.00 holdback in fees pending the fee  
20 audit.

21 The audit report was submitted to the court on February 10, 2005, and  
22 an amendment to the audit was filed on April 13, 2005.<sup>3</sup> The court gave  
23 \_\_\_\_\_

24 However, in its invoices submitted to the auditor, the \$127.00 was included. The court is  
25 unable to reconcile this difference and thus considers the fee request for the third interim  
period to be \$203,892.50.

26 <sup>2</sup> Creditor McLellan Properties joined in Sobrato's objection to the extent that it asked  
27 that fees not be approved on a final basis until the plan Trustee had an opportunity to review  
Sobrato's concerns.

28 <sup>3</sup> The amendment is related to post-effective date fees and expenses.

1 interested parties an opportunity to respond to the audit. The only  
2 comment the court received was from Cooley. The court received no further  
3 response from Sobrato or from the plan trustee.

4 From the outset, Cooley agrees to reduce its fees in the amount of  
5 \$1,626.50. This amount includes:

- 6 • \$243.00 for an entry that appears to have been double-billed  
7 [See Exhibit B];<sup>4</sup>
- 8 • \$1,368.50 for fees related to conflict searches [See Exhibit  
9 G]; and
- 10 • \$15.00 for fees related to billing by Annie Lee [See Exhibit  
11 J].

12 In relation to the remaining fees, the court has a duty to review  
13 each request and determine whether the requirements of Bankruptcy Code §  
14 330 are met. In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 840-45 (3<sup>rd</sup>  
15 Cir. 1994); In re Berg, 268 B.R. 250, 257 (Bankr. D. Mont. 2001). Section  
16 330 of the Bankruptcy Code provides that the court may award to a  
17 professional person employed under §§ 327 or 1103 reasonable compensation  
18 for actual, necessary services rendered and reimbursement of actual,  
19 necessary expenses. In determining the amount of reasonable compensation,  
20 the court considers the nature, the extent, and the value of such  
21 services, taking into account all relevant factors. 11 U.S.C. §  
22 330(a)(3).

23 In reviewing the audit report and objections to Cooley's fees, the  
24 court concludes the following.

25 **A. Objection to fees based on conflict of interest is overruled.**

---

27 <sup>4</sup> Unless otherwise noted, all references to exhibits are to the exhibits that appear in  
28 the "Review and Analysis of Final Fee Application Submitted by Cooley Godward LLP," which was  
filed with the court on February 10, 2005.

1 As discussed above, Sobrato filed an objection to Cooley's third and  
2 final fee application, alleging that a conflict of interest existed in  
3 Cooley acting as counsel for the committee and at the same time as general  
4 counsel for PacifiCare. Sobrato asked that the plan trustee be given an  
5 opportunity to investigate this alleged conflict.

6 Related to the conflict, Sobrato specifically objected to the  
7 \$97,573.00 in fees that were incurred on the plan and disclosure  
8 statement. Sobrato asserted that these fees were excessive because of  
9 Cooley's insistence that PacifiCare serve on the trust board. As  
10 discussed above, the composition of the trust board led to protracted  
11 discussions between the committee's counsel and debtors' counsel, until  
12 the court's proposal was accepted. Sobrato asked that the amount related  
13 to the plan and disclosure statement be examined by the plan trustee  
14 before any further fees were allowed.

15 The court has received no response from the plan trustee regarding  
16 this conflict nor any further response from Sobrato. In their reply to  
17 Sobrato's objection, Cooley points out that as part of their application  
18 for employment, it disclosed that it represented PacifiCare in other  
19 matters. In addition, Cooley asserts that it did not represent PacifiCare  
20 in the Chapter 11 case and presented evidence that PacifiCare was  
21 represented in this bankruptcy by its own counsel.

22 The court has reviewed Cooley's reply and explanation of events  
23 related to their proposal that a PacifiCare representative serve on the  
24 trust board.

25 The court does not believe sufficient evidence exists to make a  
26 finding of a conflict of interest, and thus overrules the objection.  
27 However, as stated at the first plan confirmation hearing, the impasse  
28 over the trust board was in part lawyer created, with both sides unwilling

1 to compromise and seek a solution. The court concludes that this  
2 contributed to the overall cost of the plan and disclosure statement.  
3 Thus, the court finds a general 10% reduction in the fees related to the  
4 plan and disclosure statement is appropriate. As a result, \$9,757.30 in  
5 fees are denied.

6 **B. Objection based on the IKON issue is overruled.**

7 Sobrato also objected to the fees sought by Cooley in handling the  
8 IKON adversary proceeding. Sobrato asserted that the amount spent on the  
9 IKON issue is excessive in the context of the case.

10 The IKON matter involved the rejection of personal property leases  
11 for copy machines under Bankruptcy Code § 365(d)(10). The leases were  
12 rejected more than eight months after the case was filed and this created  
13 several legal issues over the amount owed. IKON filed an administrative  
14 claim in the amount of \$274,000.00 and a pre-petition claim in the amount  
15 of \$544,295.00. Cooley's involvement as committee counsel was due a  
16 conflict of interest of debtors' counsel. In reviewing the audit entries  
17 related to the IKON issue [see Exhibit L], the court does not find the  
18 \$45,223.50 in fees to be unreasonable. The legal issues involved in  
19 IKON's motion to dismiss were novel. The court's resolution of the  
20 application of § 365(d)(10) was assisted by the legal arguments presented  
21 by the committee's counsel and IKON's counsel.

22 In addition, in Cooley's response to the audit, it informs the court  
23 of the final resolution of the IKON matter. The reorganized debtors have  
24 paid IKON \$62,500.00, and IKON has withdrawn its administrative and pre-  
25 petition claims totaling over \$800,000.00. Considering the outcome and  
26 the legal issues involved, the court overrules the objection related to  
27 the IKON issue.

28 **C. Cooley has adequately explained vaguely described activities**

1 Exhibit C of the audit outlines \$7,067.50 in entries related to  
2 activities that appear vague in description. Time entries are not simply  
3 to record the number of hours worked; they also should detail the type of  
4 work done. Regardless of the method of compensation and regardless of the  
5 type of professional fees at issue, the court must evaluate the complexity  
6 and necessity of work done on behalf of the estate in order to determine  
7 appropriate compensation. In re Poseidon Pools of America, Inc., 180 B.R.  
8 718, 729-31 (Bankr. E.D.N.Y. 1995).

9 The court has reviewed the entries and Cooley's response to the  
10 audit. With respect to the entries that appear on Exhibit C, the court  
11 finds Cooley's response to be an adequate explanation.

12 **D. Intra-office conferences and outside meetings and conferences**  
13 **in which more than one professional attended have been**  
14 **adequately explained.**

15 The audit report identifies \$298.00 in fees for intra-office  
16 conferences and of that amount, \$156.00 in fees in which more than one  
17 professional billed. [See Exhibit D-1.] In addition, \$4,306.50 in fees are  
18 identified as potential intra-office conferences given the date and  
19 description of the entries. [See Exhibit D-2.] There also are \$15,403.50  
20 in fees attributed to attendance by more than one professional at outside  
21 meetings and conferences. [See Exhibit E.] Of this amount, \$7,178.00 in  
22 fees involve more than one professional billed for attending the outside  
23 meeting or conference.

24 The Bankruptcy Court for the Northern District of California  
25 maintains Guidelines for Compensation of Professionals.<sup>5</sup> Guidelines 15  
26 and 16 provide:

27 15. **Conferences** - Professionals should be prepared to explain time

28 <sup>5</sup> The District's Guidelines for Compensation and Expense Reimbursement of Professionals  
and Trustees are available on the District's Web site at <http://www.canb.uscourts.gov>.

1           spent in conferences with other professionals or  
2           paraprofessionals in the same firm. Failure to justify this  
3           time may result in disallowance of all fees related to such  
4           conferences.

- 5           16. **Multiple Professionals** - Professionals should be prepared to  
6           explain the need for more than one professional or para-  
7           professional from the same firm at the same court hearing,  
8           deposition or meeting. Failure to justify this time may result  
9           in compensation for only the person with the lowest billing  
10          rate.

11          Consistent with the District's guidelines, the general rule is that  
12          no more than one professional may charge the estate for intra-office  
13          conferences and meetings absent an adequate explanation. In re Bennett  
14          Funding Group, Inc., 213 B.R. 234, 245 (Bankr. N.D.N.Y. 1997); In re  
15          A.A.D.C., Inc., 193 B.R. 448, 450-51 (Bankr. N.D. Ohio 1996); In re  
16          Poseidon Pools of America, Inc., 180 B.R. at 731. This is equally  
17          applicable to the attendance by more than one professional at an outside  
18          meeting or conference.

19          In a complex case such as this one, no single professional is going  
20          to possess all of the skills to accomplish the necessary tasks. The estate  
21          is better served where multiple professionals with the required expertise  
22          are utilized. In these circumstances, some communication is required.

23          The court accepts Cooley's explanation with respect to intra-  
24          office conferences and multiple professionals at outside  
25          conferences and meetings. Multiple attendance does not seem  
26          excessive and appears to be related to issues having some  
27          complexity.

- 28          **E. Administrative/Clerical tasks are not compensable by the estate.**

          According to District Guideline 18:

18. **Administrative Task** - Time spent in addressing, stamping and  
          stuffing envelopes, filing, photocopying or "supervising" any



1 of the foregoing is not compensable, whether performed by a  
2 professional, paraprofessional or secretary.

3 Cooley's employment and retention was to be in accordance with §  
4 330 of the Bankruptcy Code and the local guidelines of the court.  
5 Clerical services are overhead expenses and are not compensable under §  
6 330(a). Sousa v. Miguel (In re United States Trustee), 32 F.3d 1370, 1374  
7 (9<sup>th</sup> Cir. 1994).

8 Exhibit G-1 of the audit report highlights \$2,216.50 in entries that  
9 appear to be administrative/clerical tasks by paraprofessionals. In  
10 addition, Exhibit G-2 highlights \$735.00 in administrative/clerical tasks  
11 by professionals. Cooley has already agreed to a reduction of \$1,368.50  
12 in fees for conflict searches.

13 Cooley responds that the balance of the items identified in Exhibit  
14 G-1 are routinely performed by paralegals because they have specific  
15 training and experience to handle such tasks and bill at a lower rate.  
16 However, a review of the entries includes task descriptions, such as  
17 communications with court personnel to obtain transcripts or copies of  
18 orders, electronically file documents, and update the docket, to name a  
19 few. These descriptions appear to be clerical in nature. For this reason,  
20 the court denies the \$2,216.50 in fees on Exhibit G-1.

21 As for the fees on Exhibit G-2, the audit report highlights these  
22 \$735.00 in professional fees as administrative/clerical in nature. In  
23 reviewing the entries and Cooley's explanation, the court will allow  
24 these fees as they do not appear to be administrative/  
25 clerical.

26 **IV. EXPENSES**

27 The audit report highlights a number of questionable expenses  
28 reflected in Cooley's fee applications. Cooley has provided an explanation

1 of the expenses. The court finds the explanation to be adequate and will  
2 allow the expenses requested.

3 **V. CONCLUSION**

4 The court approves on a final basis fees in the amount of  
5 \$372,872.70, having denied \$12,231.80 of the requested fees. Expense  
6 reimbursement is approved in the amount of \$17,491.07. Total fees and  
7 expenses approved on a final basis are \$390,363.77. Any fees and expenses  
8 that are denied, are done so on a final basis. The holdback is released  
9 to the extent necessary to pay any remaining unpaid fees and expenses  
10 approved herein.

11 DATED: \_\_\_\_\_  
12  
13  
14

\_\_\_\_\_  
15 JAMES R. GRUBE  
16 UNITED STATES BANKRUPTCY JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 02-55527-JRG  
02-55528-JRG

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: ORDER ON THIRD AND FINAL FEE APPLICATION OF COOLEY GODWARD LLP by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_ at San Jose, California.

\_\_\_\_\_  
LISA OLSEN

Nanette Dumas, Esq.  
Office of the U.S. Trustee  
280 So. First St., Rm. 268  
San Jose, CA 95113

Ernie Wallerstein  
San Jose Medical Management  
655 Lincoln Avenue  
San Jose, CA 95126

Maureen A. Harrington  
McGrane, Greenfield, Hannon  
& Harrington LLP  
40 South Market St. 2nd Floor  
San Jose, CA 95113

Patrick M. Glenn  
Hanson, Bridgett, Marcus,  
Vlahos & Rudy LLP  
333 Market Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105-2173

Andrea T. Porter  
Foley & Lardner LLP  
One Maritime Plaza, 6<sup>th</sup> Flr.  
San Francisco, CA 94111-3409

Jenny L. Fountain  
Buchalter, Nemer, Fields  
& Younger  
333 Market Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105-2130

Robert L. Eisenbach III  
Cooley Godward LLP  
One Maritime Plaza,  
20<sup>th</sup> Floor  
San Francisco, CA 94111-3580

Marci Pierce  
Moss Adams  
438 First Street, #320  
Santa Rosa, CA 95401-6339

Susan Uecker  
Uecker & Associates, Inc.  
100 Pine Street, Suite 475  
San Francisco, CA 94111

John M. Cronin  
Cronin & Associates  
P.O. Box 9007  
La Jolla, CA 92038